



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56, 62, and 70

[Doc. # AMS-LPS-15-0057]

Amendments to Quality Systems Verification Programs and Conforming Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend its regulations to better reflect the current needs of Quality Systems Verification Program (QSVP) activities and to implement changes created by the merger of the AMS Livestock and Seed Program and the AMS Poultry Programs. These proposed changes include amending the Livestock, Meat, and Other Agricultural Commodities QSVP to expand the commodities under the QSVP to include those authorized under the Agricultural Marketing Act of 1946 (hereafter referred to as “the Act”), remove reference to “Livestock, Meat, and Other Commodities” in the title, more clearly identify and define the types of programs and services offered under QSVP, and make other technical and administrative changes. Simultaneously, AMS proposes to make conforming changes to the regulations pertaining to the Voluntary Grading of Shell Eggs and Voluntary Grading of Poultry Products and Rabbit Products to remove references to audit activities.

DATES: Comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this rulemaking must be received by **[INSERT DATE 60 DAYS AFTER DATE OF**

PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments should be submitted electronically at www.regulations.gov.

Comments received will be posted without change, including any personal information provided. All comments should reference the docket number AMS-LPS-15-0057, the date of submission, and the page number of this issue of the *Federal Register*.

Comments may also be submitted to: Jeffrey Waite, Branch Chief, Auditing Services Branch, Quality Assessment Division; Livestock, Poultry, and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture; Room 3932S, STOP 0258, 1400 Independence Avenue, SW; Washington, D.C. 20250-0258. Comments will be made available for public inspection at the above address during regular business hours or electronically at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Jeffrey Waite, Branch Chief, Auditing Services Branch, Quality Assessment Division; Livestock, Poultry, and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture; Room 3932S, STOP 0258, 1400 Independence Avenue, SW; Washington, D.C. 20250-0258; telephone (202) 720-4411; or e-mail to jeffrey.waite@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs,

harmonizing rules, and promoting flexibility. This rulemaking has been determined to be not significant for purposes of Executive Order 12866 or Executive Order 13563.

Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this proposed regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Regulatory Flexibility Act

AMS has determined that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), because the services are voluntary and provided on a fee-for-service basis and are not subject to scalability based on the business size. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so small businesses will not be unduly or disproportionately burdened. As such, these changes will not impose a significant impact on applicants requesting service under the program. Currently, approximately 950 applicants subscribe to AMS' voluntary, fee-for-services that are subject to the requirements of this regulation. The U.S. Small Business Administration's Table of Small Business Size Standards matched to the North American Industry Classification System Codes identifies small business size by average annual receipts or by the average number of employees at a firm. This information can be found in the CFR at 13 CFR parts 121.104, 121.106, and 121.201.

AMS requires that all applicants for service provide information about their company for the purpose of processing bills. Information collected from an applicant includes company name, address, billing address, and similar information. AMS does not collect information about the size of the business. However, based on working knowledge of these operations, AMS estimates that roughly 25 percent of current applicants may be classified as small entities. It is not anticipated that this action would impose additional costs to applicants, regardless of size. Current applicants will not be required to provide any additional information to receive service. The effects of this proposed rule are not expected to be disproportionately greater or less for small applicants than for larger applications. As described above, these are voluntary, fee-for-service activities.

AMS is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

USDA has not identified any relevant federal rules that duplicate, overlap, or conflict with this rulemaking.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this proposed rule will not change the information collection and recordkeeping requirements previously approved, and will not impose additional reporting or recordkeeping burden on users of these voluntary services; however, the overall reporting and recordkeeping burden would increase due to the anticipated increase in number of

respondents.

The information collection and recordkeeping requirements of this part have been approved by OMB under 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581-0128.

In September 2014, three separate OMB collections—OMB 0581-0127, OMB 0581-0124, and OMB 0581-0128—were merged, such that the current OMB 0581-0128 pertains to Regulations for Voluntary Grading, Certification, and Standards and includes 7 CFR parts 54, 56, 62, and 70.

In the past fiscal year, AMS' Livestock, Poultry, and Seed Program (LPS) has received approximately 50 inquiries related to the verification of non-genetically engineered products. Of these inquiries, 72 percent identified with industries outside the scope of LPS commodities, including the manufacture of dairy, fruits, vegetables, grains, wood products, and food and feed supplements; 8 percent identified with current industries serviced by LPS (meat and poultry manufacturing or processing, laboratories, feed manufactures); and 20 percent were identified as a service provider or an association not directly related to a service category. AMS does not expect the last group to submit an application for service; thus, the group was not included as a potential applicant.

USDA has considered the reporting and recordkeeping burden on applicants under this program. Currently, applicants are required to complete an application for service and submit documentation. Recordkeeping requirements would remain the same, though the overall burden is expected to increase due to an increase in applications. As previously stated, of approximately 50 inquiries for an existing service received by LPS, approximately three-fourths of these inquiries represented new commodities, which could

potentially increase the overall reporting and recordkeeping burden. Accordingly, if the proposed rule is adopted, and if two-thirds of the inquirers seek service, then LPS estimates the number of respondents will increase by 25, thereby increasing the overall reporting and recordkeeping burden by 602.50 hours, from 1205.80 hours to 1808.30 hours annually.

Since this action proposes to expand the scope of covered commodities, which is expected to increase the number of respondents, the already approved OMB 0158-0128 must be revised to reflect the increased reporting and recordkeeping burden. Therefore, AMS will submit a Justification for Change to OMB for approval to increase these burden hours to OMB number 0158-0128.

A 60-day comment period is provided to allow interested persons an opportunity to respond to this proposal. All written comments received will be considered before a final determination is made on this matter.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. The Act prohibits States or political subdivisions of a State to impose any requirement that is in addition to, or inconsistent with, any requirement of the Act. There are no civil justice implications associated with this proposed rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this proposed rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age,

disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This proposed rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this proposed rule will not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This proposed rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a federal statute to preempt State law only when the statute contains an express preemption provision. There are no federalism implications associated with this proposed rule.

Background and Proposed Revisions

The Act directs and authorizes the Secretary of Agriculture to facilitate the competitive and efficient marketing of agricultural products. AMS programs support a strategic marketing perspective that adapts product and marketing decisions to consumer demands, changing domestic and international marketing practices, and new technology. AMS provides impartial verification services that ensure agricultural products meet specified requirements. These services include AMS' grading program, which verifies that product meets USDA grade standards. In addition, AMS provides direct certification of products in the facilities that manufacture them. Product characteristics such as manner of cut, color, and other attributes can be directly examined by an AMS employee to determine if a specification has been met, and the product can be stamped and marketed as "USDA Certified" or "USDA Accepted as Specified." These services are voluntary, with users paying for the cost of the requested service.

Over time, industry began to request AMS verification of factors that were not apparent through an examination of the livestock or products at a processing facility. Industry desired the ability to market factors related to raising of the livestock, such as feeding regimen, in relation to the resulting products, and to do so with assurance to their customers.

To accommodate these requests for verification, AMS began conducting audits of livestock production facilities as a part of its third-party verification services. Ultimately, in 2001, AMS developed the QSVP, a suite of audit-based programs that can provide confidence that process points, such as livestock feeding regimen, are being adhered to at the farm or ranch before the livestock are processed and enter commerce as a meat product with an associated marketing claim.

The USDA Process Verified Program (PVP) is one program under QSVP. PVP provides producers and marketers of livestock, seed products, and poultry products a way to assure customers of their ability to provide consistent quality products by having written production and manufacturing processes confirmed through independent, third-party audits. Under PVP, companies outline their own specific requirements, and AMS ensures adherence to those processes via routine audits. This is in contrast to other QSVP services offered by AMS, such as the Quality Systems Assessment Program (QSA), which have program requirements outlined by AMS or a party other than the producers or marketer. For example, most of AMS' QSVP audit activities fall under the category of Export Verification activities, which are based on government-to-government agreements with international trading partners regarding specific foreign market requirements.

Several factors triggered AMS' review of the regulations describing QSVP activities. First, an organizational merger in 2013 combined the Livestock and Seed Program and Poultry Programs to create the Livestock, Poultry, and Seed (LPS) Program within AMS. Prior to the merger, both Programs administered parallel QSVP services to their respective industries. These activities were carried out under 7 CFR part 62 for livestock, meat, and related commodities and under 7 CFR part 56 and 7 CFR part 70 for shell eggs and poultry industries, respectively.

Currently, all QSVP services are delivered by the same management unit and operate by the same procedures (e.g., application process and audit process), and audits are in large measure conducted by the same personnel. Therefore, AMS proposes to remove any references to audit and verification activities contained in 7 CFR parts 56 and 70 and incorporate the commodities currently covered in those parts (i.e., shell eggs and poultry) into 7 CFR part 62.

Because 7 CFR part 62 accurately describes the process by which these services are provided, AMS is proposing to amend the definition of products describing the commodities covered under voluntary QSVP services to include products authorized by the Act. Rather than limiting the product type to an individual program within AMS, AMS believes it is more appropriate to expand the definition of products to efficiently manage the QSVP, including the PVP. AMS seeks to maintain uniformity, transparency, and efficiency of service delivery of the QSVP, including the PVP. Without expanding the definition of products, AMS would be required to establish and maintain duplicate programs in each commodity area that would essentially carry out the same functions in regard to delivering the QSVP, including the PVP.

Other changes proposed are administrative in nature. For example, because AMS is proposing to expand the scope of commodities that companies can voluntarily have verified by AMS under a QSVP, AMS is also proposing to amend the title of the regulations to remove limiting references to “livestock and meat.” Additionally, the USDA Office of the Inspector General (OIG) completed an audit in 2015 of the PVP and recommended that AMS take additional steps to unify the program, as it was delivered under the same heading.

Additional administrative changes are necessary to reflect the current terminology and organizational structure of AMS. These amendments include changing the name of the Program to reflect the merger of the Livestock and Seed Program and Poultry Programs into the Livestock, Poultry, and Seed Program. Subsequently, LPS’ Quality Assessment Division was created to oversee the Audit Services Branch, Grading Services Branch, and Standardization Branch. The Audit Services Branch replaced the Audit, Review, and Compliance Branch of the Livestock and Seed Program and incorporated auditing services that were part of the Grading Branch of Poultry Programs. Certain managerial titles were also updated with the merger: a Director was established, along with an Audit Services Branch Chief.

List of Subjects

7 CFR Part 56

Grading of shell eggs, Inspections, Marketing practices, Standards.

7 CFR Part 62

Inspections, Marketing practices, Quality Systems Verification, Standards.

7 CFR Part 70

Inspections, Marketing practices, Standards, Voluntary Grading of Poultry Products and Rabbit Products.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR parts 56, 62, and 70 as follows:

PART 56 – VOLUNTARY GRADING OF SHELL EGGS

1. The authority citation for 7 CFR part 56 continues to read as follows:

Authority: 7 U.S.C. 1621-1627.

2. Amend § 56.1 by:

- a. Removing the paragraph containing the term and definition for Auditing services;
- b. Adding in alphabetical order definitions for Branch and Chief;
- c. Removing the definition for Chief of the Grading Branch;
- d. Adding in alphabetical order a definition for Division; and
- e. Revising the definitions of Official standards, United States Standards for Quality of Individual Shell Eggs, and United States Standards, Grades, and Weight Classes for Shell Eggs (AMS 56).

The additions and revisions read as follows:

§ 56.1 Meaning of words and terms defined.

* * * * *

Branch means the Grading Services Branch for the Quality Assessment Division.

* * * * *

Chief means the Chief of the Grading Services Branch for the Quality Assessment

Division.

* * * * *

Division means the Quality Assessment Division of the Livestock, Poultry, and Seed Program.

* * * * *

Official standards means the official U.S. standards grades, and weight classes for shell eggs maintained by and available from the Livestock, Poultry, and Seed Program.

* * * * *

United States Standards for Quality of Individual Shell Eggs means the official U.S. Standards, Grades, and Weight Classes for Shell Eggs (AMS 56) that are maintained by and available from the Livestock, Poultry, and Seed Program.

* * * * *

United States Standards, Grades, and Weight Classes for Shell Eggs (AMS 56) means the official U.S. standards, grades, and weight classes for shell eggs that are maintained by and available from the Livestock, Poultry, and Seed Program.

* * * * *

§ 56.28 [Amended]

3. Amend § 56.28 by removing paragraph (d).

4. Amend § 56.46 by revising paragraph (a), revising paragraphs (b)(1)(i) through (iii), and removing paragraph (d).

The revisions read as follows:

§ 56.46 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for

any service performed, in accordance with this part, on a fee basis shall be based on the applicable formulas specified in this section. For each calendar year or crop year, AMS will calculate the rate for grading services, per hour per program employee using the following formulas:

(1) Regular rate. The total AMS grading personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) Overtime rate. The total AMS grading personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) Holiday rate. The total AMS grading personnel direct pay divided by direct hours which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b)(1) * * *

(i) Benefits rate. The total AMS grading direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement

basic and matching contributions.

(ii) Operating rate. The total AMS grading operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) Allowance for bad debt rate. Total AMS grading allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

* * * * *

5. Amend § 56.61 by revising paragraph (b) to read as follows:

§ 56.61 Where to file an appeal.

* * * * *

(b) All other appeal requests. Any interested party who is not satisfied with the determination of the class, quality, quantity, or condition of product which has left the official plant where it was graded or which was graded other than in an official plant may request an appeal grading by filing such request with the regional director in the area where the product is located or with the Chief.

6. Amend § 56.64 by revising paragraph (c) to read as follows:

§ 56.64 Who shall perform the appeal.

* * * * *

(c) Whenever practical, an appeal grading shall be conducted jointly by two graders. The assignment of the grader(s) who will make the appeal grading requested under § 56.61(b) shall be made by the regional director or the Chief.

PART 62 – QUALITY SYSTEMS VERIFICATION PROGRAMS

7. The authority citation for 7 CFR part 62 continues to read as follows:

Authority: 7 U.S.C. 1621-1627.

8. Amend part 62 by revising the heading to read as set forth above and revising all references to “Livestock and Seed Program” to read “Livestock, Poultry, and Seed Program,” and revise all references to “LS Program” to read “LPS Program” wherever they occur.

Subpart A—Quality Systems Verification Programs

9. Amend part 62 by revising the heading to Subpart A to read as set forth above.

10. Amend § 62.000 by:

- a. Removing the definitions for Branch and Chief;
- b. Revising the definition of Conformance;
- c. Adding in alphabetical order definitions for Division and Division Director;
- d. Removing the definition of Livestock; and
- e. Revising the definitions for Products, QSVP Procedures, and Quality Systems Verification Programs (QSVP).

The revisions and additions read as follows:

§ 62.000 Meaning of terms.

* * * * *

Conformance. The fulfillment of criteria or a requirement.

* * * * *

Division. The Quality Assessment Division (QAD) of the Livestock, Poultry, and Seed Program.

Division Director. The Director of QAD, or any officer or employee of the Livestock, Poultry, and Seed Program to whom authority has been delegated, or to whom authority

may be delegated, to act in the Director's stead.

* * * * *

Products. All agricultural commodities and services within the scope of the Agricultural Marketing Act of 1946, et seq.

QSVP Procedures. The requirements and guidelines set forth by the Agricultural Marketing Service regarding the development, documentation, and implementation of QSVP.

* * * * *

Quality System Verification Programs (QSVP). A collection of voluntary, audit-based, user-fee programs that allow applicants to have program documentation and program processes assessed by an AMS auditor.

* * * * *

§ 62.200 [Amended]

11. Amend § 62.200 by removing paragraph (b).

12. Revise § 62.202 to read as follows:

§ 62.202 How to apply for service.

Applicants may apply for QSVP services by submitting the following information to the QAD office by email to QAD.Auditservice@ams.usda.gov or by mail to: USDA, AMS, LPS, QAD, 1400 Independence Avenue, SW, STOP 0258, Washington, DC 20250-0258.

- (a) A completed LPS-109, Application for Service;
- (b) A letter requesting QSVP services; and
- (c) A complete copy of the applicant's program documentation, as described in

the QSVP procedures.

13. Revise § 62.203 to read as follows:

§ 62.203 How to withdraw service.

Service may be withdrawn by the applicant at any time, provided that the applicant notifies QAD in writing of his/her desire to withdraw the application for service and pays any expenses the Department has incurred in connection with such application.

14. Amend § 62.207 by revising paragraphs (b) and (c) to read as follows:

§ 62.207 Official assessment.

* * * * *

(b) Program assessment. Auditors and USDA officials shall conduct an on-site assessment of the applicant's program to ensure provisions of the applicant's program documentation have been implemented and conform to QSVP procedures.

(c) Program determination. Applicants determined to meet or not meet QSVP procedures or the applicant's program requirements shall be notified of their program's approval or disapproval.

* * * * *

15. Amend § 62.208 by revising the introductory text and paragraphs (a), (b), and (e) to read as follows:

§ 62.208 Publication of QSVP assessment status.

Approved programs shall be posted for public reference on the agency Web site. Such postings shall include:

- (a) Applicant name and contact information; and
- (b) Products, services, process points, or standards included in the scope of

approval.

* * * * *

(e) Any other information deemed necessary by the Director.

16. Revise § 62.209 to read as follows:

§ 62.209 Reassessment.

Approved programs are subject to periodic reassessments to ensure ongoing conformance with LPS QSVP procedures covered under the scope of approval. The frequency of reassessments shall be based on LPS QSVP procedures, or as determined by the Director.

17. Amend § 62.210 by revising paragraph (b) introductory text, (b)(5), and (c) to read as follows:

§ 62.210 Denial, suspension, or cancellation of service.

* * * * *

(b) QSVP services may be suspended if the applicant fails to maintain its program requirements, or conform to LPS Program QSVP procedures; such as failure to:

* * * * *

(5) Submit significant changes to an approved program and seek approval from the Program Manager or Program Review Committee, as appropriate, prior to implementation of significant changes to an approved program;

* * * * *

(c) QSVP services may be cancelled, an application may be rejected, or program assessment may be terminated if the Director or his designee determines that a nonconformance has remained uncorrected beyond a reasonable amount of time.

18. In § 62.211, revise the introductory text and paragraph (a) to read as follows:

§ 62.211 Appeals.

Appeals of adverse decisions under this part, may be made in writing to the Director at 1400 Independence Avenue, SW; Room 3932-S, STOP 0258; Washington, DC 20250-0201. Appeals must be made within 30 days of receipt of adverse decision.

(a) Procedure for appeals. Actions under this paragraph concerning decision of appeals of the Director shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under various statutes set forth at 7 CFR 1.130 through 1.151 and the Supplemental Rules of Practice in 7 CFR part 50.

* * * * *

19. Revise § 62.213 to read as follows:

§ 62.213 Official identification.

The following, as shown in Figure 1, constitutes official identification to show product or services produced under an approved USDA Process Verified Program (PVP):

Figure 1.



(a) Products or services produced under an approved USDA PVP may use the “USDA Process Verified” statement and the “USDA Process Verified” shield, so long as

each is used in direct association with a clear description of the process verified points approved by the Division.

(b) The USDA Process Verified shield must replicate the form and design of the example in Figure 1 and must be printed legibly and conspicuously:

(1) On a white background with a gold trimmed shield, with the term “USDA” in white overlaying a blue upper third of the shield, the term “PROCESS” in black overlaying a white middle third of the shield, and term “VERIFIED” in white overlaying a red lower third of the shield.

(2) On a white or transparent background with a black trimmed shield, with the term “USDA” in white overlaying a black upper third of the shield, the term “PROCESS” in black overlaying a white middle third of the shield, and the term “VERIFIED” in white overlaying a black lower third of the shield.

(c) Use of the “USDA Process Verified” statement and the “USDA Process Verified” shield shall be approved in writing by the Director prior to use by an applicant.

20. Amend § 62.300 by revising paragraph (e) to read as follows:

§ 62.300 Fees and other costs of service.

* * * * *

(e) Other costs. When costs, other than those costs specified in paragraphs (a) through (c) of this section, are involved in providing the QSVP services, the applicant shall be responsible for these costs. The amount of these costs shall be determined administratively by the Division. However, the applicant will be notified of these costs before the service is rendered.

21. Revise § 62.400 to read as follows:

§ 62.400 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements of this part have been approved by OMB under 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581-0128.

PART 70 – VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

22. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621-1627.

23. Amend § 70.1 by:

- a. Removing the definition for Auditing services;
- b. Adding in alphabetical order definitions for Branch and Chief;
- c. Removing the definition of Chief of the Grading Branch; and
- d. Adding in alphabetical order a definition for Division.

The additions read as follows:

§ 70.1 Definitions.

* * * * *

Branch means the Grading Services Branch for the Quality Assessment Division.

* * * * *

Chief means the Chief of the Grading Services Branch for the Quality Assessment Division.

Division means the Quality Assessment Division of the Livestock, Poultry, and Seed Program, AMS.

* * * * *

§ 70.4 [Amended]

24. Amend § 70.4 by removing paragraph (c).

25. Amend § 70.6 by revising paragraph (a) to read as follows:

§ 70.6 OMB control number.

(a) Purpose. The collecting of information requirements in this part has been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581-0128.

* * * * *

26. Amend § 70.71 by revising the introductory text and paragraphs (a) and (b)(1)(i) through (iii) and by removing paragraph (d).

The revisions read as follows:

§ 70.71 On a fee basis.

* * * * *

(a) For each calendar year, AMS will calculate the rate for grading services, per hour per program employee using the following formulas:

(1) Regular rate. The total AMS grading personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) Overtime rate. The total AMS grading personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating

rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) Holiday rate. The total AMS grading personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b)(1) * * *

(i) Benefits rate. The total AMS grading direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) Operating rate. AMS' grading total operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) Allowance for bad debt rate. Total AMS grading allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

* * * * *

27. Amend § 70.101 by revising paragraph (b) to read as follows:

§ 70.101 Where to file an appeal.

* * * * *

(b) All other appeal requests. Any interested party who is not satisfied with the determination of the class, quality, quantity, or condition of product which has left the official plant where it was graded, or which was graded other than in an official plant, may request an appeal grading by filing such request with the regional director in the area where the product is located or with the Chief.

28. Amend § 70.104 by revising paragraph (c) to read as follows:

§ 70.104 Who shall perform the appeal.

* * * * *

(c) Whenever practical, an appeal grading shall be conducted jointly by two graders. The assignment of the grader(s) who will make the appeal grading requested under § 70.101(b) shall be made by the regional director or the Chief.

Dated: October 19, 2016.

Elanor Starmer,

Administrator,

Agricultural Marketing Service.

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